

January 15, 2008

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellant -
Cross-Appellee,

v.

DARRELL DEAN PROWS, also known
as Darrell D. Prows, also known as D.
Dean Prows,

Defendant - Appellee -
Cross-Appellant.

Case Nos. 06-4272 and 06-4286
(D.C. No. 2:04-CR-102-BSJ)

ORDER

Case No. 06-4272 is the appeal by the United States of the sentence imposed on the defendant following remand from this court. Case No. 06-4286 is a cross-appeal by the defendant of the length of time he was sentenced to supervised release following remand from this court. The opening brief of the United States has been filed, as has the response/opening brief of the defendant. Both briefs cite to the appendix filed by the United States.

The United States has now filed a document styled as a "Withdrawal of Appeal" in which the government has moved for voluntary dismissal of its appeal in Case No. 06-

4272. The defendant has no objection to the dismissal. Accordingly, Case No 06-4272 is DISMISSED pursuant to Fed. R. App. P. 42(b) and the mandate shall issue in that appeal forthwith.

We are left with the cross-appeal of the defendant, Mr. Prows, Case No. 06-4286, which is now the principal appeal. As already noted, the response/opening brief of the defendant has already been filed. However, since the bulk of that brief is dedicated to responding to the opening brief of the United States that has now become irrelevant, because the brief cites to an appendix that is no longer part of the appeal, and because of the already convoluted procedural history of the appeals involving Mr. Prows, the interests of justice will be best served by having the sole remaining issue in the appeal re-briefed by the defendant.

Accordingly, the response/opening brief of the defendant filed November 30, 2007 is stricken. An amended opening brief shall be filed within 40 days from the date of this order. The amended opening brief shall comply with Fed. R. App. P. 28(a) and Tenth Circuit Rule 28.2(A) and shall cite to the record on appeal filed June 26, 2007 (*see* Tenth Circuit Rule 28.1(B)). We emphasize that the brief is not being stricken due to any fault in the brief but as a convenience to the court, and that CJA counsel appointed to represent Mr. Prows is entitled to be compensated for the time spent reasonably spent in preparing an amended brief.

Once the amended brief has been served and filed, the United States will proceed with its response brief in accordance with the applicable rules.

Entered for the Court
ELISABETH A. SHUMAKER
Clerk of Court

A handwritten signature in black ink, appearing to read "Douglas E. Cressler", written over a light gray rectangular background.

by:
Douglas E. Cressler
Chief Deputy Clerk